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Federal Communications Commission

DA 99-972

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Colony, Oklahoma)

(Tularosa, New Mexico)

(Ravenna, Nebraska)

MM Docket No. 99-190
RM-9631

MM Docket No. 99-191
RM-9632

MM Docket No. 99-192 ✓
RM-9633

NOTICE OF PROPOSED RULE MAKING

Adopted: May 12, 1999

; Released: May 21, 1999

Comment Date: July 12, 1999

Reply Comment Date: July 27, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-190, RM-9631**Petitioner:** Suelou, Inc.

c/o Jeffrey D. Southmayd
Southmayd & Miller
1220 19th Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

Proposal: Allot Channel 286A¹ to Colony, Oklahoma, as the community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Colony, Oklahoma	--	286A

Coordinates: 35-22-15 NL and 98-41-23 WL

Additional Information: This allotment requires a site restriction of 2.7 kilometers (1.7 miles) northwest to avoid a short-spacing to Station KBLP, Channel 286A, Lindsay, Oklahoma. We recognize that Colony is incorporated and listed in the U.S. Census, thus meeting the basic criteria for community status. However, we may find that a population grouping of 163 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. In the past, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, Suelou, Inc., is requested to present the Commission with specific information to demonstrate that Colony has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See, e.g., Harietta, Michigan, 11 FCC Rcd 20468 (1996), 12 FCC Rcd 6058 (1997).

FCC Contact: Leslie K. Shapiro, (202) 418-2180

¹ Suelou requested the allotment of Channel 272A to Colony. However, an initial engineering review showed that Channel 272A at Colony conflicted with the previously filed request to allot Channel 2721 to Wichita Falls, Texas. See MM Docket 98-198, 13 FCC Rcd 20965 (1998), and counterproposals thereto. Therefore, we have substituted Channel 286A for consideration herein.

B. MM Docket No. 99-191, RM-9632**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 274C3 to Tularosa, New Mexico, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Tularosa, New Mexico	--	274C3

Coordinates 33-04-30 NL and 106-01-06 WL

Additional Information: This allotment requires no site restriction. Mexican concurrence in the allotment is required since Tularosa is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

C. MM Docket No. 99-192, RM-9633**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President, Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 276C2 to Ravenna, Nebraska, as the community's first local aural service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Ravenna, Nebraska	--	276C2

Coordinates: 41-01-36 NL; 98-54-48 WL

Additional Information: This allotment requires no site restriction.

FCC Contact: Leslie K. Shapiro, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before July 12, 1999, and reply comments on or before July 27, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the

proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.